

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

JOHN THIBODEAUX, ET AL

NO. 6:18-CV-501(LEAD)
NO. 6:18-CV-1414 (MEMBER)

VS.

JUDGE ROBERT R. SUMMERHAYS

J.M. DRILLING, LLC.,
ET AL

MAGISTRATE JUDGE
CAROL B. WHITEHURST

**MOTION FOR SUMMARY JUDGMENT ON ESTOPPEL / WAIVER CLAIM AGAINST
ROCKHILL INSURANCE COMPANY REGARDING SUBSIDENCE EXCLUSION**

Now into Court, through undersigned counsel, come Plaintiffs, John Thibodeaux, Amy Thibodeaux, and Gabrielle Thibodeaux, who, in the alternative, and only in the event that the Court denies Plaintiffs' Motion for Summary Judgment on Insurance Coverage regarding Rockhill's Subsidence Exclusion, respectfully assert that there are no genuine disputes as to any material fact that Rockhill Insurance Company should be estopped from asserting the Subsidence Exclusion as a coverage defense under its Excess Commercial Follow Form Policy, or be deemed to have waived the application of the Subsidence Exclusion, because of its negligence, bad acts, misrepresentations, and/or deceptive practices.

Plaintiffs identify the following independent basis that support this Court's granting of this Motion for Summary Judgment on Estoppel / Waiver:

- I. ROCKHILL SHOULD BE ESTOPPED FROM DENYING COVERAGE ON THE BASIS OF ITS SUBSIDENCE EXCLUSION BECAUSE IT MISREPRESENTED THE TERMS OF ITS POLICY BY PROMOTING IT AS A "FOLLOW FORM" POLICY AND FAILING TO DISCLOSE EXCLUSIONS EMBEDDED OR HIDDEN IN THE BODY OF ITS NON-STANDARD, PROPRIETARY POLICY FORM WHICH WERE CONTRARY TO THE UNDERLYING COVERAGE AND CONTRARY TO STANDARD ISO EXCLUSIONS; AND**

II. IN THE ALTERNATIVE, ROCKHILL SHOULD BE ESTOPPED FROM DENYING COVERAGE ON THE BASIS OF ITS SUBSIDENCE EXCLUSION BECAUSE IT FAILED TO PROVIDE ITS NON-STANDARD, PROPRIETARY POLICY FORM TO INSIGHT AND/OR JM DRILLING WITH ITS INSURANCE QUOTE.

Plaintiffs are entitled to judgment as a matter of law against Rockhill Insurance Company that Rockhill is estopped from asserting the Subsidence Exclusion as a coverage defense under its Excess Commercial Follow Form Policy, or be deemed to have waived the application of the Subsidence Exclusion, because of its negligence, bad acts, misrepresentations, and/or deceptive practices, and, further, that Rockhill Insurance Company be ordered to pay the remainder of the outstanding Final Judgment as referenced above.

As between the Thibodeaux Plaintiffs and Rockhill Insurance Company, Plaintiffs have asserted both a Declaratory Judgment Action and an Enforcement Action regarding its Final Judgment. In regards to these claims by and between Plaintiffs and Rockhill, neither party has requested a jury trial.

In support of Plaintiffs' Motion for Summary Judgment on their Estoppel / Waiver Claim Against Rockhill Insurance Company Regarding the Subsidence Exclusion, Plaintiffs attach the following exhibits to this Motion:

1. Louisiana Third Circuit decision in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. CA 17-494, rendered on November 22, 2017,
2. Louisiana Third Circuit decision in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. CA 17-495, rendered on November 22, 2017,
3. Louisiana Supreme Court Writ Denial in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2017-C-2149, rendered on February 23, 2018,
4. Motion for Summary Judgment on Liability against J.M. Drilling, LLC. filed by Thibodeaux Plaintiffs in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B, 15th Judicial District Court, Lafayette, Louisiana on January 19, 2018,

5. Trial Court's Amended Judgment on Rules regarding Thibodeaux Plaintiffs Motion for Summary on Liability against J.M. Drilling, LLC. filed on March 21, 2018,
6. Louisiana Third Circuit decision in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. CA 18-676 rendered on March 7, 2019,
7. Final Judgment against J.M. Drilling, LLC. in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B, 15th Judicial District Court, Lafayette, Louisiana rendered on April 3, 2018,
8. Complaint for Declaratory Judgment filed by Thibodeaux Plaintiffs (including all exhibits attached) in the matter "John Thibodeaux, et. al. vs. J.M. Drilling, LLC., et. al.", Docket No. 18-501, United States District Court, Western District of Louisiana, Lafayette Division, Doc. No. 1, filed 4/12/18,
9. Complaint for Declaratory Judgment filed by Rockhill Insurance Company in the matter entitled "Rockhill Insurance Company vs. J.M. Drilling, LLC." United States District Court, Western District of Tennessee, Eastern Division, Case No. 1:18-cv-01050, Doc. 2, filed 6/4/18,
10. Rockhill Insurance Company Answer to Thibodeaux Plaintiffs' Complaint for Declaratory Judgment, Doc. 15, filed 6/1/18,
11. Thibodeaux Plaintiffs' Amended Complaint for Declaratory Judgment (including all exhibits), Doc. 75, filed 12/14/18,
12. Rockhill Insurance Company Answer to Thibodeaux Plaintiffs' Amended Complaint for Declaratory Judgment, Doc. 84, filed 1/15/19,
13. Rockhill Insurance Company Excess Commercial Follow Form Policy, policy no. R XSL RU 000621-03, issued to J.M. Drilling, LLC. with policy period of 5/2/15 to 5/2/16 (Insight Bates # 9055-9128),
14. Affidavit of John Thibodeaux dated January 29, 2021,
15. Admiral Insurance Company Commercial General Liability Policy, policy no. CA000019278-02, issued to J.M. Drilling, LLC. with policy period of 5/2/15 to 5/2/16 (Insight Bates # 9327-9400),
16. Deposition of John Moore (J.M. Drilling, LLC.) taken on January 25, 2021 in the above captioned matter,
17. 1442 Deposition of J.M. Drilling taken on March 8, 2016 in "John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.", Docket No. 2015-4167-B (underlying state suit),

18. Deposition of Mark Moore taken on December 6, 2016 in “John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.”, Docket No. 2015-4167-B (underlying state suit),
19. 1442 Deposition of Gulfgate Construction, LLC. taken on February 18, 2016 in “John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.”, Docket No. 2015-4167-B (underlying state suit),
20. Deposition of Michael Towell (Rockhill Insurance Company) taken on November 17, 2020 in the above captioned matter,
21. Admiral Ins. Co. Motion to Dismiss (Doc. 54, filed 10/26/18),
22. Receipt, Release and Indemnity Agreement between Thibodeaux Plaintiffs, J.M. Drilling, LLC., and Admiral Insurance Company in “John Thibodeaux, et. al. vs. Gulfgate Construction, et. al.”, Docket No. 2015-4167-B (underlying state suit),
23. Affidavit of Randall King executed on February 12, 2021,
24. Affidavit of Mark Moore executed on February 24, 2021,
25. Deposition of Brenda Johnson taken on October 1, 2020, in the above captioned matter,
26. Deposition of James Mahurin taken on March 11, 2021, in the above captioned matter,
27. Deposition of Charles Henderson taken on March 12, 2021, in the above captioned matter, and
28. Thibodeaux Plaintiffs’ Second Amended Complaint, Doc. 97,
29. Thibodeaux Plaintiffs’ Fifth Amended Complaint, Doc. 226,
30. Deposition of Kelli Kasal (Rockhill Insurance Company) taken on February 4, 2021 in the above captioned matter, and
31. Deposition of Akos Swierkiewicz taken on March 5, 2021 in the above captioned matter.

CONCLUSION

For the foregoing reason, Plaintiffs, John Thibodeaux, Amy Thibodeaux, and Gabrielle Thibodeaux, respectfully request that this Honorable Court grant their Motion for Summary Judgment on their Estoppel / Waiver Claim Against Rockhill Insurance Company Regarding the Subsidence Exclusion. Further, Plaintiffs request that this Honorable Court order Rockhill

Insurance Company to pay the remainder of the outstanding Final Judgment as referenced above.
Finally, Plaintiffs request that all costs associated with this hearing be assessed against Defendant,
Rockhill Insurance Company.

Respectfully Submitted,

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CERTIFICATE

I hereby certify that a copy of the above and foregoing has this day been electronically
mailed to all counsel of record.

Lafayette, Louisiana, this 24 day of March 2021.

/s/ Edward O. Taulbee
Edward O. Taulbee, IV.-#12699